

# **Chapter 1**

## **Purpose of and Need for Action**

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### **1.1 Introduction**

In its 1996 decision in *Ramsey v. Kantor* (96 F.3d 434), the Ninth Circuit Court of Appeals directed the National Marine Fisheries Service (NMFS) to comply with the National Environmental Policy Act (NEPA) in its review of, and consultation on, salmon fishery management plans under the following three jurisdictions:

- North Pacific Fishery Management Council (NPFMC) for the coast off Southeast Alaska [Note: NPFMC has conditionally deferred management authority for the salmon fishery in the Exclusive Economic Zone (EEZ) off Southeast Alaska to the State of Alaska. This deferral permits the State to manage the salmon fishery in both state and EEZ waters as one fishery.]
- Pacific Fishery Management Council (Council) for the Washington, Oregon, and California coasts (Pacific Coast)
- *United States v. Oregon* for the Columbia River basin

As a result of this ruling and because of the complex management regimes governing Pacific salmon fisheries, NMFS has prepared this Final Programmatic Environmental Impact Statement (FPEIS) that provides an analysis of the environmental effects of all the Pacific salmon fisheries affecting both the listed and proposed salmonids. The Alaska Department of Fish and Game (ADFG) requested and was designated a cooperating agency. ADFG assisted with preparation and review of the FPEIS, particularly with respect to sections related to the Southeast Alaska fishery. Because this

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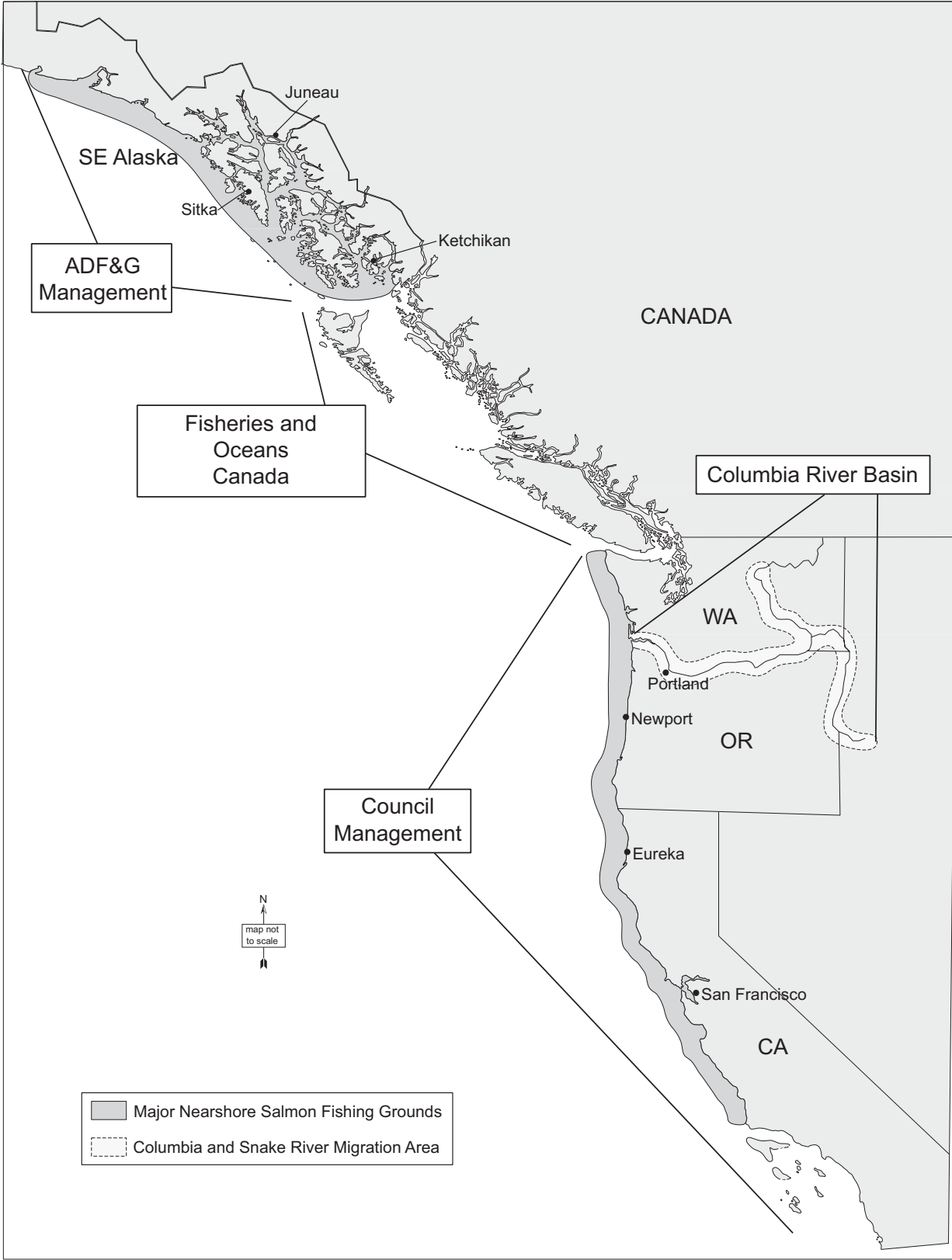
federal action encompassed the "... adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based" (40 Code of Federal Regulations [CFR]- 1508.18[b][2]), NMFS chose to produce a programmatic EIS, which is encouraged by the Council on Environmental Quality (CEQ) to eliminate repetitive discussion of the same issues and to analyze the broad scope of actions (40 CFR 1500.4[i], 1502.4[d], 1502.20).

NEPA requires federal agencies to prepare an EIS on "federal actions with effects that may be major and which are subject to federal control and responsibility" (40 CFR 1508.18, 1508.27). Through the EIS process, federal agencies assess the effects of a range of alternative actions on the physical, biological, and human environments to make better informed decisions. Accordingly, NMFS proposed in its Notice of Intent (62 Federal Register [FR] 3873, January 27, 1997) to develop an EIS addressing the Pacific salmon fisheries in the three jurisdictions noted above (Figure 1.1-1).

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Although healthy and harvestable salmon and steelhead stocks exist, many stocks throughout the western United States have declined to critically low levels. The extent and severity of these stock declines are underscored by the number of salmon and steelhead evolutionarily significant units (ESUs) now listed or proposed for listing under the ESA (Table 1.2-1). Several of these ESUs, as well as other stocks that are not listed, have been the focus of large-scale conservation and recovery efforts for a minimum of two decades, with substantial costs to the public and private sectors. During the same period, fisheries harvesting Pacific salmon and steelhead have been increasingly constrained in order to allow sufficient spawning escapement (the number of sexually mature adults returning to spawning grounds). With the more recent ESA listings, public and private initiatives and expenditures to preserve and protect habitat important to these stocks have increased and will likely continue to increase in the future.

The causes of salmon declines are manifold and are rarely, if ever, solely a result of harvest effects. Long-term effects associated with harvest of unlisted stocks also substantially affect many salmonid ESUs, and an understanding of all the effects of fisheries is crucial to the effective design and implementation of recovery programs. Generally, the fishery management plans for each of the jurisdictions provide a flexible framework for managing fisheries to meet their conservation and use objectives. Each year, annual fishery plans are developed within the context of the framework plans to meet the year-specific circumstances related to the status of stocks affected by the fisheries. The federal action considered for each of the jurisdictions is NMFS' review and approval of the annual fishery plans. NMFS' review is an ongoing process that seeks to evaluate approaches taken by management agencies, within and among the three jurisdictions, to meet the underlying need for conservation and use. In its review and consultation with these three jurisdictions, NMFS must meet its statutory obligations to protect salmonid resources; seek to maximize long-term, socioeconomic benefits (i.e., from fisheries); and meet its trust obligations to treaty Tribes. However, there are different ways to balance these objectives and different strategies that can be used that may provide better solutions for meeting the obligations and objectives of the respective fishery plans. The alternatives considered in this FPEIS are programmatic in nature and are designed to provide review flexibility and to provide an overview of fishery management methods and strategies that could be implemented as part of the annual planning process that would then be subject to NMFS' review and approval.



**Figure 1.1-1.** Fishery management jurisdictions in and adjacent to the affected environment.

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**Table 1.2-1.** Status of salmon, steelhead, and cutthroat trout ESUs under the Endangered Species Act.

Species	ESU Status	
Pink Salmon	Listed:	None
	Not Warranted:	1) Even-year ESU (10/95) 2) Odd-year ESU (10/95)
Coho Salmon	Listed:	1) Central CA ESU (T - 10/96) 2) Southern OR/Northern CA Coasts ESU (T - 5/97) 3) OR Coast ESU (T - 8/98)
	Candidates:	1) Puget Sound/Strait of Georgia ESU (7/95) 2) Lower Columbia River/Southwest WA ESU (7/95)
	Not Warranted:	1) Olympic Peninsula ESU (7/95)
Chinook Salmon	Listed:	1) Sacramento River Winter-run ESU (E - 1/94) 2) Snake River Fall-run ESU (T - 4/92) 3) Snake River Spring/Summer-run ESU (T - 4/92) 4) Puget Sound ESU (T - 3/99) 5) Lower Columbia River ESU (T - 3/99) 6) Upper Willamette River ESU (T - 3/99) 7) Upper Columbia River Spring-run ESU (E - 3/99) 8) Central Valley Spring-run ESU (T - 9/99) 9) CA Coastal ESU (T - 9/99)
	Candidates:	1) Central Valley Fall and Late Fall-run ESU (9/99)
	Not Warranted:	1) Upper Klamath-Trinity Rivers ESU (3/98) 2) OR Coast ESU (3/98) 3) WA Coast ESU (3/98) 4) Mid-Columbia River Spring-run ESU (3/98) 5) Upper Columbia River Summer/Fall-run ESU (3/98) 6) Southern OR and Northern CA Coastal ESU (9/99) 7) Deschutes River Summer/Fall-run ESU (9/99)
Chum Salmon	Listed:	1) Hood Canal Summer-run ESU (T - 3/99) 2) Columbia River ESU (T - 3/99)
	Not Warranted:	1) Puget Sound/Strait of Georgia ESU (3/98) 2) Pacific Coast ESU (3/98)
Sockeye Salmon	Listed:	1) Snake River ESU (E - 11/91) 2) Ozette Lake ESU (T - 3/99)
	Not Warranted:	1) Baker River ESU (3/99) 2) Okanogan River ESU (3/98) 3) Lake Wenatchee ESU (3/98) 4) Quinalt Lake ESU (3/98) 5) Lake Pleasant ESU (3/98)
Steelhead	Listed:	1) Southern CA ESU (E - 8/97) 2) South-Central CA Coast ESU (T - 8/97) 3) Central CA Coast ESU (T - 8/97) 4) Upper Columbia River ESU (E - 8/97) 5) Snake River Basin ESU (T - 8/97) 6) Lower Columbia River ESU (T - 3/98) 7) CA Central Valley ESU (T - 3/98) 8) Upper Willamette ESU (T - 3/99) 9) Middle Columbia River ESU (T - 3/99) 10) Northern CA ESU (6/00)
	Candidates:	1) OR Coast ESU (3/98)
	Not Warranted:	1) Southwest WA ESU (8/96) 2) Olympic Peninsula ESU (8/96) 3) Puget Sound ESU (8/96) 4) Klamath Mountains Province ESU (4/01)
Coastal Cutthroat Trout	Listed:	1) Umpqua River ESU (E - 8/96; proposed de-listing 3/99)
	Proposed Listings:	1) Southwestern WA/Columbia River ESU (T - 3/99)
	Candidates:	1) Oregon Coast ESU (4/99)
	Not Warranted:	1) Puget Sound ESU (4/99) 2) Olympic Peninsula ESU (4/99) 3) Upper Willamette River ESU (4/99) 4) Southern OR/CA Coasts ESU (4/99)

**Notes:**

E = endangered, T = threatened, not warranted = Status reviews conclude that a listing is not warranted at this time.

Date of listing is given in parenthesis

An ESU is a distinctive group of Pacific salmon or steelhead

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### **1.2.1 Review for Compliance with the Endangered Species Act**

The Pacific salmon fisheries affect, to varying degrees, one or more listed ESUs and are subject to review and potential constraint under the ESA. Constraint of individual fisheries depends on the level of effect and the status of the ESUs encountered in those fisheries. Constraint is defined under the ESA through the level of allowable take, determined either through the Section 7 consultation process for federal agency actions or the Section 10 Incidental Take Permit (ITP) process for nonfederal actions. An Incidental Take Statement is a required part of an ESA action, Section 7 consultation biological opinion that defines the level of take associated with a proposed action that is exempt from EAS Section 9 take prohibitions.

### **1.2.2 Obligation To Review Salmon Management Plans Under The Magnuson-Stevens Fishery Conservation And Management Act**

In addition to its responsibilities to ensure fisheries comply with the ESA, NMFS has an equally binding responsibility under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to review annual fishery management plans developed by the State of Alaska and the Council. This review ensures that these annual management plans are consistent with Magnuson-Stevens Act conservation and socioeconomic objectives, which require maximizing socioeconomic benefits of the fisheries consistent with the long-term sustainability of fishery resources. As a condition for NPFMC to continue deferral of management of the Southeast Alaska salmon fishery in the EEZ to the State of Alaska, NMFS must find the annual fishery management plan developed by the State of Alaska (for both state and EEZ waters) to be consistent with the Magnuson-Stevens Act.

### **1.2.3 Review under United States v. Oregon**

As a party to *United States v. Oregon*, NMFS participates in the management of fisheries in the Columbia River basin to the extent of reviewing proposed management actions for consistency with ESA requirements, treaty fishing case law standards, and the federal trust responsibility to federally recognized Indian tribes.

### **1.2.4 Actions Ensuing from NMFS' Review of Annual Fishery Management Plans**

The federal government has an individual and separate relationship with each of the three jurisdictions. As a result, NMFS' review of annual fishery management plans and subsequent actions differ for each jurisdiction, as described below.

#### **1.2.4.1 Southeast Alaska**

In Southeast Alaska more than 90 percent of the commercial troll salmon and sport salmon fisheries occurs in state waters, with the remainder occurring in the contiguous EEZ (3 to 200 miles offshore). Under the April 1990 Fisheries Management Plan for the salmon fisheries in the EEZ off the coast of Alaska (NPFMC 1990), NPFMC, with the concurrence of the Secretary of Commerce, conditionally deferred its management authority for the salmon fishery in the EEZ to the State of Alaska, subject to the annual determination that

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the fishery is, among other things, consistent with applicable federal laws, including the ESA.

The Alaska Department of Fish and Game (ADF&G) manages the Southeast Alaska salmon fishery in both state and federal (EEZ) waters. The director of NMFS' Alaska Region reviews ADF&G annual fishery management plans to ensure consistency with the Pacific Salmon Treaty, Magnuson-Stevens Act, and other applicable laws, and reports his findings to NPFMC. NPFMC retains the option of specifying management measures applicable to the EEZ that differ from those of the state if it determines that ADF&G proposed actions are inconsistent with the Magnuson-Stevens Act or other federal law. To date, NPFMC has never exercised that option and has consistently deferred management of the commercial troll and recreational salmon fishery in the EEZ to ADF&G (ADF&G 1997). If the deferral was to be suspended, state management of state waters and federal management in the EEZ would be separate actions. NMFS would consult with NPFMC regarding management in the EEZ and the resulting federal action would be subject to NEPA and other applicable federal law. Depending on whether the state could show that a sufficient federal nexus remained, the salmon fisheries in state waters that result in the incidental take of listed species would be assessed by NMFS through either the Section 7 consultation process or the Section 10 permit application process under the ESA. If NMFS were to issue a Section 10 permit, it would be a federal action requiring compliance with NEPA and the consultation requirements of Section 7 of the ESA.

The Ninth Circuit Court of Appeals, in its 1996 decision in *Ramsey v. Kantor* (Ninth Circuit 1996), clarifies that the actions ensuing from NMFS' review are the decision of whether to continue deferral of management to the State of Alaska and the associated issuance of an Incidental Take Statement (ITS), and that those actions need to comply with NEPA. In response, an environmental assessment (EA) regarding deferral to the State of Alaska was completed in 1998. Although the EA considered the State of Alaska's chinook management plan for 1997 through 2003, which was based on a 1996 U.S. Section Letter of Agreement providing for abundance-based management developed in the absence of a treaty agreement for chinook, the associated Finding of No Significant Impact (FONSI) was only effective through the winter season of 1999.

Since issuance of that 1998 EA, a comprehensive new Pacific Salmon Treaty bilateral agreement, providing for abundance-based management, was reached between the United States and Canada. The State of Alaska has indicated its intention to manage the Southeast Alaska fishery according to the terms of the 1999 Pacific Salmon Treaty Agreement, with particular emphasis on Annex IV, Chapter 3: Chinook Salmon. The new management program will be in effect from 1999 through 2008. NMFS has issued a biological opinion of no jeopardy, including an Incidental Take Statement (ITS) that covers the 1999 Pacific Salmon Treaty Agreement, and the deferral of management to the State of Alaska for the duration of this management program, subject to the conditions that require reinitiation of consultation (NMFS 1999a). An ITS is a required part of an ESA Section 7 consultation biological opinion that defines the level of take associated with a proposed action that is exempt from ESA Section 9 take prohibitions.

The primary federal action being considered under NPFMC's jurisdiction in the Southeast Alaska fishery is the annual decision regarding continued deferral of management to the State and the issuance of an ITS through the Section 7 consultation process.

### **1.2.4.2 Washington, Oregon, and California**

Because the salmon fisheries off the coast of Washington, Oregon, and California occur primarily in federal waters and are regulated through the Council, subject to approval by the Secretary of Commerce, the fisheries are under direct federal control.<sup>1</sup> The Pacific Coast Salmon Plan establishes conservation objectives for different species in different geographic areas. Annual fishery management plans prescribe conservation measures for fisheries intercepting these stocks.<sup>2</sup> In some cases the stock groups are identical to ESUs identified by NMFS or a stock may be included in an ESU or vice versa. Council conservation objectives may respond directly to conservation objectives set by other jurisdictions (e.g., objectives of the Pacific Salmon Treaty or agreements between the states and sovereign Tribal nations).

In recent years conservation objectives for a few stocks have largely determined the scope and conduct of fisheries in the Council management area. The stocks that have been most constraining in recent years include the following:

- Listed Sacramento River Winter-run chinook
- Snake River Fall-run chinook
- Listed Southern Oregon/Northern California Coast coho
- Listed Oregon Coast coho
- Listed Puget Sound chinook
- Klamath River chinook
- Several stocks of Puget Sound and Washington coastal coho

Federal actions that result from NMFS' review of the Council's framework management plan are subject to approval or disapproval by the Secretary of Commerce, as is the implementation of annual regulations, including the issuance of the ITS.

### **1.2.4.3 Columbia River Basin fisheries**

Columbia River basin fisheries are managed under the jurisdiction of the United States District Court for the District of Oregon, in *United States v. Oregon* (1996). Until recently, management decisions had been implemented through the Columbia River Fisheries Management Plan (CRFMP), which expired at the end of 1998 but was extended until July 1999 by parties to the agreement (i.e., the States of Washington, Oregon, and Idaho; NMFS; USFWS; Yakama Nation; Confederated Tribes of Warm Springs; Confederated Tribes of Umatilla; Shoshone-Bannock Tribe; and Nez Perce Tribe). These parties continue to negotiate provisions for a new plan.

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<sup>1</sup> The council recently amended the Pacific Coast Salmon Plan, which is incorporated by reference in this document. The decision whether to amend this framework management plan was subject to NEPA review and is not revisited here; however, decisions will be required regarding implementation of annual regulations under the Pacific Coast Salmon Plan that are also subject to NEPA review.

<sup>2</sup> The Council is responsible for managing EEZ fisheries, but setting regulations for the EEZ is accomplished through consultation with state and Tribal fishery managers, and takes into account Tribal and non-Tribal commercial fisheries and recreational fisheries in Puget Sound; Grays Harbor; Willapa Bay; the Columbia River; San Francisco Bay; the Quinault, Queets, Hoh, and Quillayute rivers on Washington's coast; numerous Oregon streams; and the Klamath River in northern California.

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In the meantime, NMFS conducts consultations regarding Tribal fisheries through the Bureau of Indian Affairs and proposed state fisheries are considered either through Section 10 or Section 7 of the ESA. If there is an agreement among state, Tribal, and federal parties to *United States v. Oregon*, the agreement by the parties represents the action subject to consultation. NMFS' role stems from its status as a party to *United States v. Oregon*, its participation in the management of Columbia River basin fisheries, and its responsibility for implementation of the ESA. This provides a federal nexus for consultation under Section 7 of the ESA. In *Ramsey v. Kantor*, the Ninth Circuit Court of Appeals held that, with respect to the Columbia River basin fisheries, the issuance of an ITS is a major federal action requiring NEPA compliance.

### 1.3 Proposed Action

NMFS has determined it is appropriate to assess the effects of the Pacific salmon fisheries that are subject to its review (i.e., Southeast Alaska, Pacific Coast, and Columbia River basin) in part because salmon originating from one jurisdiction may be encountered by fisheries in the other two jurisdictions. In addition, management actions taken in one fishery may have little effect on escapement of listed ESUs, or may have consequences that substantially affect management actions required in another fishery. As the lead federal agency responsible for implementing ESA as it relates to listed salmon and steelhead, NMFS has far-reaching duties to further the protection and recovery of these species and the ecosystems in which they depend. These duties include a variety of research and regulatory activities that affect resource use throughout the full range of the salmonid's ecosystem and that directly or indirectly affect municipalities, state governments, industries, and citizens throughout the western United States. The federal action being considered in each of the three jurisdictions differs in detail; however, the common theme of the actions, and thus this FPEIS, is to address a range of alternatives for managing these fisheries to meet both conservation and use objectives within the context of the existing framework management plans. It is appropriate that NMFS undertake this action, as proposed in this FPEIS, to provide not only a contemporary evaluation of the effects of different harvest management approaches contained in the annual fishery management plans it reviews, but also a platform for future NEPA analysis of specific actions resulting from, or related to, these reviews.

Annual fishery management plans in the three jurisdictions supplement fixed management plans (also known as framework management plans) that provide a framework for conservation objectives or management objectives. Conservation objectives may respond to statutory requirements of the jurisdictions' implementing legislation, to international or Tribal treaty requirements, or to regulatory requirements of the ESA, as articulated by NMFS.<sup>3</sup> Management objectives may refer to conservation but may also refer to socioeconomic objectives.

Annual fishery management plans provide specific management measures to meet the objectives of the framework management plans, taking into account changes in stock abundance and other factors. Management measures are actions taken to limit harvest or incidental take and include

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<sup>3</sup> An example of a conservation objective contained in a framework management plan for a listed species would be the harvest rate limits for Oregon coastal natural (OCN) coho, set by Amendment 14 to the Council's salmon framework plan, Pacific Coast Salmon Plan. An example of a conservation objective for an unlisted stock would be the objectives for ocean harvest of Klamath origin chinook, contained in Amendment 9 to the Pacific Coast Salmon Plan. Another example of a conservation objective would be meeting the harvest guideline for chinook salmon in Southeast Alaska as stipulated under the Pacific Salmon Treaty, the framework management plan followed by NPFMC and the State of Alaska. This objective is intended to conserve a variety of chinook stocks, including both listed and unlisted stocks, from the United States and Canada.



setting harvest quotas, seasons, fishing areas, retention limits, gear restrictions, and other regulatory measures. Alternative approaches to fishery management using various management measures may be proposed by the jurisdictions during the management process or considered by NMFS as conditions included in the ITS. NMFS' review of specific management measures designed to meet conservation and use objectives of the framework management plans and the ESA is the action addressed in this FPEIS.

This FPEIS will serve as the baseline of environmental and economic information that NMFS can use to assess the effects of a range of alternative management approaches on Pacific salmon fisheries. The assessment of direct (i.e., short-term) effects on the biological environment is concerned foremost with estimating the incidental take of listed species under alternative approaches to fishery management. The assessment of indirect (i.e., long-term) and cumulative effects is concerned foremost with the effects the proposed alternatives will have on the recovery of the listed salmon and steelhead species. All alternatives analyzed in this FPEIS will not jeopardize listed ESUs.

## 1.4 Related Laws, Policies, and Treaties

Management of Pacific salmon fisheries within and among the three jurisdictions is a complex undertaking involving a number of agencies and organizations representing disparate social, political, and conservation interests. A partial list of agencies, governments, and other organizations that manage and coordinate actions relating to Pacific salmon and steelhead includes the following:

- The United States Departments of State, Interior, and Commerce
- The States of California, Oregon, Washington, Idaho, and Alaska
- More than 30 Tribal jurisdictions
- The Pacific Fishery Management Council (PFMC)
- The North Pacific Fishery Management Council (NPFMC)
- The Pacific Salmon Commission (PSC)

Canadian fisheries, managed by the Fisheries and Oceans Canada (DFO) and numerous First Nation Tribes, also have effects on stocks of concern.

The legal and policy framework for Pacific salmon fishery management, as considered in this FPEIS, is developed from the following:

- The United States-Canada Pacific Salmon Treaty
- Several treaties between the United States and Tribes
- Court decisions interpreting Tribal treaties
- Magnuson-Stevens Act
- Federal policies
- Administrative codes and policies governing state fish and wildlife agencies

At the international level, fisheries are subject to the provisions of the Pacific Salmon Treaty, which includes the area between Cape Suckling, Alaska, and Cape Falcon, Oregon. The Pacific Salmon Treaty is based on commitments to the conservation and management of salmon stocks that cross

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international boundaries between Canada and the United States. Most relevant to this FPEIS is the June 30, 1999, Agreement (Annex 4), which stipulates management goals and measures for important chinook and coho stocks that are taken in Southeast Alaska and Canada and off the U.S. Pacific Coast. Included among these stocks are several listed chinook ESUs. The new agreement establishes an abundance-based chinook management regime for the stocks and fisheries subject to the Pacific Salmon Treaty. This regime will be in effect from 1999 through 2008.

### 1.4.1 Current Federal Statutes and Mandates

#### 1.4.1.1 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Act is the principal federal statute that provides for the management of U.S. marine fisheries. Originally enacted as the Fishery Conservation and Management Act in 1976 (Public Law 94-265), this law was arguably the most significant fisheries legislation in U.S. history. It has been amended periodically since 1976; most recently in 1996, by the Sustainable Fisheries Act (Public Law 104-297). The basic concepts of the Magnuson-Stevens Act have not changed and include the following:

- The biological conservation of a fishery resource has priority over its use.
- Conservation and management decisionmaking must be based on the best available scientific information, which should include social, economic, and ecological factors along with biological factors.
- The needs of fishery resource users vary across the nation, and public participation in the policy making process should be maximized.

The Magnuson-Stevens Act (as amended in 1996) included the following policy statement regarding the nation's fisheries (16 U.S.C. 1801, Sec. 2[c]):

POLICY - It is further declared to be the policy of the Congress in this Act:

1. to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;
2. to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;
3. to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected states and citizens; considers efficiency; draws upon federal, state, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish; and is workable and effective;
4. to permit foreign fishing consistent with the provisions of this Act;
5. to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of

fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation;

6. to foster and maintain the diversity of fisheries in the United States; and
7. to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.

The Magnuson-Stevens Act also established ten National Standards that serve as the overarching objectives for fishery conservation and management (16 U.S.C. 1851, Sec. 301[a].):

IN GENERAL - Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

1. Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.
2. Conservation and management measures shall be based upon the best scientific information available.
3. To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
4. Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be a) fair and equitable to all such fishermen; b) reasonably calculated to promote conservation; and c) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
5. Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.
6. Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.
7. Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.
8. Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to a) provide for the sustained participation of such communities, and b) to the extent practicable, minimize adverse economic impacts on such communities.

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9. Conservation and management measures shall, to the extent practicable, a) minimize bycatch and b) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.
10. Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The Magnuson-Stevens Act also mandates the Secretary of Commerce to develop advisory guidelines to assist in fishery management plan development. These guidelines serve primarily to interpret and aid compliance with the national standards (codified at 50 CFR Part 600, and most recently revised on May 1, 1998 [63 FR 24212]).

#### 1.4.1.2 American Fisheries Act

The American Fisheries Act (AFA) was enacted in October 1998 and represents the culmination of a decade-long struggle over the allocation of Alaska's most abundant fishery resource, walleye pollock in the Bering Sea and Aleutian Islands (BSAI). The AFA institutionalized a resource allocation scheme among competing onshore and offshore components of the fish processing industry.

Provisions mandated by the AFA to be in effect in 1999, were implemented through the total allowable catch (TAC) specification process and emergency interim rulemaking (final specifications notice, 64 FR 12103, March 11, 1999; extended emergency interim rules, 64 FR 34743, June 29, 1999; and 64 FR 33425, June 6, 1999). Permanent federal regulations to implement provisions of the AFA required that the NPFMC amend fishery management plans; hence, final AFA implementing rules likely will not be in effect until 2001. For the 2000 fishing year, AFA provisions were implemented by emergency interim rules published January 5, 2000 (65 FR 380) and January 28, 2000 (65 FR 4520), and extended on June 23, 2000 (65 FR 39107) through December 24, 2000, and January 16, 2001, respectively.

Major provisions of the AFA include the following:

1. Requirement of a minimum of 75 percent U.S. ownership of fishing vessels, up from majority ownership, and maximum size and horsepower limits for replacement vessels;
2. Specific allocation of the BSAI directed pollock fishery TAC among the inshore component (50 percent) catcher/processor vessels in the offshore component (40 percent), and motherships in the offshore component (10 percent) after first deducting 10 percent of the total TAC for the Community Development Quota (CDQ) Program and an incidental catch allowance;
3. Buyout of nine catcher/processor vessels' future fishing privileges, financed through a combination of a grant and direct loan obligations, to be paid back by a tax of \$0.006 per pound of pollock harvested by the inshore sector;
4. Specific naming of 20 catcher/processor vessels that may participate in the (offshore) pollock fishery, 7 catcher vessels that may deliver pollock to those catcher/processers, and 19 catcher vessels that may deliver pollock to motherships;

5. Criteria for catcher vessels to participate in harvesting BSAI pollock in the inshore sector, and criteria for limiting the participation of onshore processing plants in the BSAI pollock fishery;
6. Fishery cooperatives with limitations on the structure and participation among cooperatives involving catcher vessels and the inshore sector processing plants;
7. Directions for the NPFMC to develop or improve on limitations (sideboards) on the activities of AFA vessels and processors in non-pollock fisheries to prevent negative spillover effects of fishery cooperatives.

### **1.4.1.3 Endangered Species Act**

The Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.* (ESA) provides broad protection for fish, wildlife, and plant species that are listed as threatened or endangered, and the conservation of the ecosystems on which they depend. Responsibility for implementing the ESA is shared by the U.S. Fish and Wildlife Service (for terrestrial and freshwater species) and NMFS (for most marine species and anadromous fish). The ESA provides for the conservation of species which have been so depleted in numbers that they are in danger of or threatened with extinction throughout all or a significant portion of their range. "Species" is defined by the ESA as a species, a subspecies, or, for vertebrates only, a distinct population segment. NMFS has determined that a Pacific salmon stock will be considered a distinct population segment, and hence a "species" under the ESA, if it represents an evolutionarily significant unit (ESU) of the biological species.

Section 4 of the ESA prohibits the consideration of economic impacts in making species listing decisions. NMFS is required to make a listing decision based solely on the best scientific and commercial data available. However, under Section 4, NMFS must consider economic impacts when designating critical habitat necessary for the continued survival of the species. After a species is listed, a recovery plan is prepared which identifies conservation measures to help the species recover.

Section 7 of the ESA outlines the procedures for Federal interagency cooperation to conserve listed species and designated critical habitat, and requires all Federal agencies to consult with NMFS (or FWS) concerning the potential effects of their actions on any listed species. Section 7(a)(1) requires federal agencies to conserve endangered and threatened species. Section 7(a)(2) requires federal agencies to ensure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat. There is a federal action associated with management of the fisheries for each of the jurisdictions considered in the EIS. As a result, fishery management of southeast Alaska, the Pacific coast, and in the Columbia River requires consultation under Section 7 of the Act.

If a proposed action is "likely to adversely affect" a listed species or its critical habitat, then formal consultation under Section 7(a)(2) must be undertaken. Formal consultation concludes with NMFS' issuing a biological opinion. If the biological opinion concludes that the proposed action is likely to "jeopardize" the continued existence of the listed species or result in the destruction or adverse modification of designated critical habitat,

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then NMFS may develop reasonable and prudent alternatives in order to avoid these outcomes.

#### **1.4.14 Marine Mammal Protection Act**

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 *et seq.*), as amended through 1996, establishes a federal responsibility to conserve marine mammals; management responsibility for cetaceans (whales) and pinnipeds (seals) other than walrus is vested with NMFS. The USFWS is responsible for all other marine mammals in Alaska including sea otter, walrus, and polar bear. Congress found that certain species and population stocks of marine mammals are or may be in danger of extinction or depletion due to human activities. Congress also declared that marine mammals are resources of great international significance, and they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound resource management policies.

The MMPA's primary management objective is to maintain the health and stability of the marine ecosystem, with a goal of obtaining an optimum sustainable population of marine mammals within the carrying capacity of the habitat. The MMPA is intended to work in concert with the provisions of the ESA. The Secretary of Commerce is required to give full consideration to all factors regarding regulations applicable to the "take" of marine mammals, including the conservation, development, and use of fishery resources, and the economic and technological feasibility of implementing the regulations. If a fishery affects a marine mammal population, then the potential effects of the fishery must be analyzed in the appropriate EA or EIS, and the managing jurisdiction or NMFS may be requested to consider regulations to mitigate adverse effects.

#### **1.4.15 Coastal Zone Management Act**

Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*) is designed to encourage and assist states in developing coastal management programs, to coordinate state activities, and to safeguard regional and national interests in the coastal zone. Section 307(c) of the Coastal Zone Management Act requires that any federal activity affecting the land or water uses or natural resources of a state's coastal zone be consistent with the state's approved coastal management program, to the maximum extent practicable.

A proposed fishery management action that requires a fishery management plan amendment or implementing regulations must be assessed to determine whether it affects the coastal zone of a state with an approved coastal zone management program. If so, NMFS must provide the state agency having coastal zone management responsibility with a consistency determination for review at least 90 days before final NMFS action. Determinations have been submitted to the responsible state agencies for review and have been found to be consistent with coastal zone management programs.

#### **1.4.16 Executive Order 13084: Consultation and Coordination with Indian Tribal Governments**

This Executive Order (EO) was signed on May 14, 1998, and published May 19, 1998 (63 FR 27655). Its purpose is to establish regular and meaningful consultation and collaboration with Indian Tribal governments in the development of federal regulatory

practices that significantly or uniquely affect their communities; to reduce the imposition on unfunded mandates on Indian Tribal governments; and to streamline the application process for and increase the availability of waivers to Indian Tribal governments. This EO requires federal agencies to have an effective process to involve and consult with representatives of Indian Tribal governments in developing regulatory policies, and it prohibits regulations that impose substantial direct compliance costs on Indian Tribal communities.

#### **1.4.1.7 Executive Order 12962: Recreational Fisheries**

This EO was signed June 7, 1995, and published June 9, 1995 (Volume 60, Number 111). Its purpose is to conserve, restore, and enhance aquatic systems to provide for increased recreational fishing opportunities nationwide. It states the following:

- Federal agencies, in cooperation with States and Tribes, are to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities.
- A National Recreational Fisheries Coordination Council is to be established.
- A comprehensive Recreational Fishery Resources Conservation Plan is to be developed.
- All Federal agencies are to work to identify and minimize conflicts between recreational fisheries and their respective responsibilities under the ESA. The USFWS and NMFS will develop a joint agency policy to ensure consistency in the administration of the ESA between and within the two agencies, promote collaboration with other Federal, State, and Tribal fisheries managers, and improve and increase efforts to inform nonfederal entities of the requirements of the ESA.
- The role of the Sport Fishing and Boating Partnership Council is to be expanded.

#### **1.4.1.8 Columbia River Compact**

The U.S. Congress ratified a compact and agreement between Oregon and Washington in 1918 covering concurrent jurisdiction of Columbia River fisheries. The Columbia River Compact (Compact) is comprised of the Washington Department of Fish and Wildlife (WDFW) Commission and the Oregon Fish and Wildlife Commission (OFWC) of the Oregon Department of Fish and Wildlife (ODFW). In recent years, the WDFW and ODFW commissions have delegated Compact decisionmaking authority to the agency's director or their designee. Compact hearings are held periodically to adopt or review seasonal commercial regulations. Hearings occur just prior to all major seasons to consider current information and establish season dates and gear restrictions. Additional hearings are often necessary when updated information concerning run size or attainment of escapement goals or catch guidelines indicates a need to adjust the season.

### **1.4.2 Treaties between the United States and American Indian**

Five treaties ratified by the United States and various Washington Tribes between 1854 and 1856 guaranteed Tribes fishing rights in common with citizens of the Territory. These are the treaties of Medicine Creek, Quinalt, Neah Bay, Point Elliott, and Point-No-Point.

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Findings of *United States v. Washington*, 384 F. Supp. 312, commonly referred to as the Boldt Decision (United States District Court for the Western District of Washington, Tacoma District 1974) clarified these treaties with regard to allocation of salmon harvests between Tribal and non-Tribal fishers, holding that Tribes are entitled to a 50 percent share of the harvestable run of fish. *Hoh v. Baldrige*, 522 F. Supp. 683 (United States District Court for the Western District of Washington, Tacoma District 1981), established the principle that where annual fishery management plans might affect an individual Tribe, the plans must take into account returns to individual streams, thus establishing a key management principle of river-by-river or run-by-run management. The Ninth Circuit Court adopted the Puget Sound Salmon Management Plan, and the framework management plan adopted under *Hoh v. Baldrige* established principles governing the management of shared salmon resources and established the principle of comanagement whereby Tribes are equal comanagers with the State and represent themselves in the regional and international management forums.

Similar principles were restated in a series of opinions in *United States v. Oregon*. In general, the court held the following:

- The State must seek to regulate Tribes by the least restrictive means consistent with necessary conservation measures (*United States v. Oregon*, 769 F.2d 1410 [Ninth Circuit 1985]).
- The Tribes must be afforded a fair opportunity to take 50 percent of the harvestable number of fish from each run by reasonable means.
- The States may regulate accustomed Tribal fishing stations only where the interests of conservation<sup>4</sup> are justified (*United States v. Oregon*, 718 F.2d 299 [Ninth Circuit 1983]).

Because the Columbia River basin salmon fishery involves the overlapping jurisdictions of Oregon, Washington, and Idaho, the Ninth Circuit Court (*United States v. Oregon*) recognized that an annual fishery management plan should be agreed to by all parties to reduce the potential for continuous legal dispute over allocation and regulation of the fishery. Until its expiration in July 1999, the CRFMP was the vehicle to accomplish this goal. Under the CRFMP parties negotiated annual fishery management plans and if there was a disagreement, the CRFMP provided specific dispute resolution measures. Although the CRFMP has expired, the parties continue to manage the fisheries consistent with the procedures of the CRFMP while a new plan is being negotiated.

Washington, Oregon, and California Tribes participate directly in the management of EEZ fisheries through representation on the Council, CRFMP, and Pacific Salmon Commission, and indirectly through technical and policy committees that support activities of these groups. Fisheries in state and inshore waters in Washington and the Columbia River basin are comanaged with treaty Tribes. Fisheries for salmon originating in the Klamath basin are comanaged by the Yurok and Hoopa Tribes, the State of California, and the Council.

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<sup>4</sup> In this context, conservation is defined as those measures that are reasonable and necessary to the perpetuation of a particular run or species of fish.



### **1.4.3 State Management Role**

States have management responsibilities for salmon fisheries occurring in waters within 3 miles of the coast and in all inshore and freshwater areas. States participate directly in the management of EEZ fisheries through their representation on the Council, NPFMC, Pacific Salmon Commission, and through participation on technical and policy committees that support activities of these organizations. State fishery agencies, along with NMFS and Tribal fishery agencies, provide much of the technical information and research used in managing the fisheries. Although fisheries in state waters are, in principle, a separate management jurisdiction from EEZ fisheries, in practice, state and federal management is integrated through the various overlapping management forums and shared conservation objectives. State fishery management policies are set by commissions appointed by the administrative branch, and the actions are defined in state administrative codes.<sup>5</sup> State fishery management actions in California are subject to review under CEQA regulations.

While fishery boards and commissions in the five states have multiple responsibilities, their primary role is to establish policy and direction for fish and wildlife species and their habitats, and to monitor the state fish and wildlife departments' implementation of goals, policies, and objectives the boards and commissions establish. The regulatory entities also classify wildlife and establish basic rules and regulations governing the time, place, manner, and methods used to harvest or enjoy fish and wildlife.

**Alaska**-The Alaska Board of Fisheries consists of seven members, appointed by the governor for 3-year staggered terms. The board has broad regulatory powers within the state. Members may adopt regulations regarding seasons, harvest levels, gear restrictions, fish classification for various uses, and watershed and habitat improvement and management.

**Washington**-The Washington Fish and Wildlife Commission consists of nine members appointed by the governor for 6-year terms. The Commission is the supervising authority for the Department. With the 1994 merger of the former Departments of Fisheries and Wildlife, the Commission has comprehensive species authority as well. Through formal public meetings and informal hearings held around the state, the Commission provides an opportunity for citizens to actively participate in management of Washington's fish and wildlife.

**Idaho**-The Idaho Fish and Game Commission has the duty to regulate and control fishing, hunting, trapping, and other activity relating to wildlife and to administer and carry out the policy of the state in accordance with the provisions of the Idaho Fish and Game Code. The Commission is not authorized to change the policy, but only to administer it (36-103). Because changing conditions affect the preservation, protection, and perpetuation of Idaho wildlife, the methods of administering the state's policy must be flexible.

**Oregon**-The Oregon Fish and Wildlife Commission consists of seven members appointed by the governor for staggered 4-year terms. Commissioners formulate general state programs and policies concerning management and conservation of fish and wildlife resources, establish seasons, and set methods and bag limits for recreational and commercial take.

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<sup>5</sup> Alaska, Washington, and Oregon have all recently adopted legislation to guide management of fisheries and resources. These wild salmonid policies are incorporated herein by reference.

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California-The California Fish and Game Commission, appointed by the Governor and confirmed by the Senate, is composed of five members. The Commission formulates general policies for the California Department of Fish and Game (CDFG) with respect to fish and wildlife management, introduction of exotic species, wetlands protection, use of Department-administered lands, and other subjects. The Commission formulates general policies for the conduct of CDFG with respect to fish and wildlife management, introduction of exotic species, wetlands protection, and use of departmentally administered lands, designation of department-administered lands, and classification and regulation of state rare and endangered species.

### 1.5 Relevant Environmental Assessments and Environmental Impact Statements

Framework management plans drafted in the 1970s for the salmon fishery in the North Pacific EEZ (e.g., High Seas Salmon East of 175° East, 50 CFR 674) were addressed by several NEPA documents, including the FPEIS for the commercial troll fishery off the coast of Alaska (December 14, 1977), Amendment 2 Final State EIS (April 1981), and the EA for Amendment 3 (April 12, 1983).

In 1997 NMFS, with ADF&G as a cooperating agency, wrote an EA to address the federal action of deferring management in the EEZ to the State of Alaska, as directed by the 1990 framework management plan (NMFS 1997a). Preparation of the EA was in response to the previously noted *Ramsey v. Kantor* decision that had identified the action as requiring NEPA compliance. The FONSI associated with the EA anticipated that Southeast Alaska fisheries would be evaluated further, and, in a broader context, in what is now this coastwide FPEIS.

The Council's first salmon fishery management plan and its associated EIS were issued to govern the 1977 salmon season. A new plan and EIS were prepared in 1978, and from 1979 to 1984 new fishery management plans and supplemental EISs were prepared annually. In 1984 the Council adopted a comprehensive framework plan titled *Final Framework Amendment* (49 FR 43679), and known as the Pacific Coast Salmon Plan, that allowed annual management measures to be varied according to stock abundance and other critical factors without creating a new framework management plan or State EIS each season. At irregular intervals the Council has developed amendments to portions of the framework management plan. Each of the amendments adopted since 1984 has been accompanied by an EA or EIS, and each has been subject to NEPA review and compliance.

Amendments for which EAs or EISs have been written that are relevant to this FPEIS include the following:

- Specific spawner escapement goals for Oregon coastal natural (OCN) coho and Klamath River fall chinook (Amendments 7, 9, 11, and 13).
- Non-Indian harvest allocation (Amendments 7, 9, and 10).
- Habitat (Amendment 8)
- Definition of overfishing (Amendment 10).
- Management objectives for stocks listed under the ESA (Amendment 12).
- Update the plan to meet new requirements of the SFA, clarify management objectives, update the EIS, and include editorial improvements (Amendment 14).

These amendments, EAs, and EISs are relevant because they are part of the regular process of Council management to refine conservation and management objectives, including those for listed ESUs.

In 1997 NMFS prepared a draft EA addressing federal participation in 1997 Columbia River and Snake River fisheries affecting spring/summer chinook and sockeye salmon listed under ESA (NMFS 1997b). The preferred alternative served as the basis for the Section 7 consultation under ESA and addressed incidental take of listed Pacific salmon in the treaty Tribal and non-treaty fisheries in the Columbia and Snake river basins. The EA noted that cumulative effects to listed salmonids would be assessed in a comprehensive FPEIS. Additional EAs have been prepared that consider Columbia River basin winter, spring, and summer run fisheries, fall season fisheries, and Snake River fisheries for the year 2000.

In 1994 the effects of hydropower system operation were addressed in an EIS (United States Department of the Interior 1994). The effects and alternatives associated with drawdown of the four lower Snake River hydro projects are also considered in the U.S. Army Corps of Engineers' (Corps') Lower Snake River Juvenile Salmon Migration Feasibility Report and Environmental Impact Statement (Corps 2002).

The release of hatchery-reared fish has a wide range of possible effects on fisheries and the biota. In 1996, a FPEIS addressing artificial propagation of salmon and steelhead in the Columbia River was issued (Columbia Basin Fish and Wildlife Authority [CBFWA] 1996). Many EISs have been prepared by the USDA Forest Service on timber harvest actions, which may indirectly affect the fisheries considered in this FPEIS.

## 1.6 Scoping

The formal scoping period opened with the publication of the Notice of Intent (NOI) (62 FR 3873, January 27, 1997) to develop a comprehensive FPEIS to analyze environmental effects of Pacific salmon fisheries in three jurisdictions (i.e., Southeast Alaska; the Washington, Oregon, and California coast; and the Columbia River basin). The NOI stated:

As a result of [*Ramsey v. Kantor*], and because of the complex management regimes governing Pacific salmon fisheries, NMFS has determined that an EIS that covers all the salmon fisheries affecting both the listed and proposed salmonids is the most appropriate means to provide full analysis and consideration of the environmental effects of these fisheries.

NMFS held five scoping meetings to provide an opportunity for public input into the range of actions, alternatives, and impacts that the EIS should consider. Four of the five scoping meetings were announced in the FRN. The Federal Register Notice announced meetings were held on the following dates in the following locations: February 3 in Portland, Oregon; February 4 in Boise, Idaho; February 5 in Seattle, Washington; and February 18 in Santa Rosa, California. One additional meeting was held in Sitka, Alaska, on March 20, 1997, to provide more opportunity for comment from the Alaska region. NMFS received 17 public testimonies at these scoping meetings, along with an additional 19 written comments. Statements or written comments were received from individuals representing themselves; state, federal, and Tribal management agencies; sport fishing and conservation groups; electrical rate payers and industrial users; and commercial fishing associations. Written comments and summaries of the scoping meetings are available in the planning record.

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Topics identified during scoping included the following:

- Defining the action
- Developing the purpose and need for the FPEIS
- Taking a broad approach to define the need for action and in scoping the alternatives and their effects
- Limiting the action and alternatives considered to NMFS' regulatory authority
- Assuring that adequate public involvement occurs and that the FPEIS is clearly written for all to understand
- Selecting the proper methods for estimating salmon stock populations and the effects on them
- Describing decision-making authority and coordination between NMFS, other federal agencies, state agencies, and Tribes; and compliance with various regulations, plans, management agreements, guidelines, court decisions, and other applicable requirements
- Concern over the geographic area being evaluated, including the Columbia and Snake rivers and tributaries and cumulative effects to all of the fisheries
- Identifying other agency actions and programs, factors, and other secondary effects that affect salmon stocks and the potential success of the alternatives evaluated
- Effects of alternatives on Tribal-Treaty-secured, fishing rights
- The direct and cumulative historical, economic, and social effects of reduced stocks and restrictions of commercial harvests on communities

All comments received during the scoping process were reviewed and considered for inclusion in this FPEIS (Appendix G). Comments relevant to the alternatives are further discussed in Chapter 2.